

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 13646-47/2004**

Decided on: 17.05.2012

IN THE MATTER OF

RAMJAS FOUNDATION SOCIETY AND ANR.

..... Petitioners

Through: Mr. Sunil Mittal, Advocate

versus

GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Ms. Zubeda Begum, Advocate with
Ms. Sana Ansari, Advocate

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The petitioner No.1/Ramjas Foundation Society and the petitioner No.2/Managing Committee of Ramjas Senior Secondary School No.1, Darya Ganj, New Delhi, have filed the present petition against the respondent No.1/Govt. of NCT of Delhi and the respondent No.2/Director of Education (DOE), praying *inter alia* for quashing/setting aside the order dated 13.05.2004 passed by respondent No.2, directing that an amount of ₹7,94,711/- be deducted from the grant-in-aid to be released to the petitioners under sub-section (4) of Section 24 and under sub-section (2) of Section 6 of the Delhi School Education Act, 1973 (hereinafter referred to as 'the Act') read with the relevant rules, for repeated non-compliance of the

orders passed in respect of one Shri R.S. Sharma, a teacher employed in the petitioner No.1/school.

2. The relevant facts of the case are undisputed and lie in a narrow compass. The petitioner No.1 is a society registered under the Societies Registration Act and it manages a number of senior secondary schools in Delhi. One of the schools run by the petitioner No.1/society is located at Darya Ganj, New Delhi and is known as Ramjas Senior Secondary School No.1. One Shri R.S. Sharma, was a teacher of PGT (Maths) in the petitioner No.1/school. He tendered his resignation to the school on 01.10.1996. The said resignation was accepted by the Chairman of the petitioner No.2/Management Committee of the school on 01.11.1996 and Shri R.S. Sharma was relieved from his duties on 31.12.1996, i.e., after the expiry of the notice period. As a result of the post of the PGT (Maths) having fallen vacant in the petitioner No.1/school, the school constituted a Departmental Promotion Committee (DPC) and selected another teacher, who was already teaching in the school as TGT (Maths), and promoted him to the post of PGT (Maths). Pertinently, as the petitioner No.1/school was receiving grants-in-aid to the extent of 95% from the respondents, it was required to comply with the terms and conditions stipulated in the Delhi School Education Act and Rules. As per Rule 114A of the Rules, the resignation submitted by an employee of a private school is liable to be accepted within a period of 30

days from the date of receipt of the resignation by the Managing Committee, but with the prior approval of the Director of Education.

3. Admittedly, no approval had been obtained by the petitioners from the respondent No.2/DOE before accepting the resignation of Shri R.S. Sharma. Rather, it is the stand of the respondent No.2/DOE that Shri R.S. Sharma was unwell and after the completion of his treatment from 13.08.1996 to 12.08.1997, he had submitted his fitness certificate to the petitioners and had reported for duty but was prevented from joining the school. As a result, he lodged a complaint against the school with the respondents. The respondents in turn called upon the petitioner No.2/Managing Committee to inform the reasons for declining to permit Shri R.S. Sharma from joining his duty. A letter to this effect was issued on 06.01.1998 by the respondent No.2/DOE to the petitioner No.2/ Managing Committee.

4. The petitioners initially replied to the aforesaid letter issued by the respondent No.2/DOE informing that a request had been made by Shri R.S. Sharma for seeking voluntary retirement on 01.10.1996 on account of his ill-health and consequently, he was relieved from his duty w.e.f. 31.12.1996. However, later on, the petitioners changed their stand in the letter dated 23.01.1998 addressed to the respondent No.2/DOE and submitted that Shri R.S. Sharma had tendered his resignation and had

requested for waiver of the three months notice period because of his ill-health. It was also stated that it was not a case of voluntary retirement by the teacher.

5. Thereafter, the respondents directed the petitioners to take Shri R.S. Sharma back into the school by passing orders dated 11.06.1999, 27.12.1999 and lastly on 03.07.2000. However, the petitioners informed the respondent No.2/DOE that there was no vacancy in the petitioner No.1/school. In view of the aforesaid reply received from the petitioners, the respondent No.2/DOE directed that Shri R.S. Sharma be reinstated in Ramjas Boys Senior Secondary School No.5, Karol Bagh, New Delhi, against a vacant post. The petitioner No.1/school again declined to do so and instead, challenged the order dated 03.07.2000 passed by the respondents No.1 and 2 in a writ petition filed in this Court, registered as W.P.(C) 6424/2000. The aforesaid writ petition was decided vide order dated 10.12.2002, wherein the learned Single Judge observed as below:-

"It appears that such a direction was given to facilitate the petitioners. However, in view of the stand now taken by the petitioners, Respondent No.3 has to be re-instated in the School from which he is alleged to have submitted his resignation. Accordingly, the petitioners will re-instate Respondent No.3 in Ramjas Boys Sr.Sec. School No.1, Darya Ganj, New Delhi. In case there is no post available for re-instating Respondent No.3, the petitioner will have to create a supernumerary post to comply with the orders of Respondents No.1 and 2.

Respondent No.3 will of course be entitled to all consequential benefits.

The writ petition is disposed of with the above directions.”

6. It was only after the aforesaid order dated 10.12.2002 was passed that the petitioners reinstated Shri R.S. Sharma on 16.01.2003. In the very next month, the respondents issued a notice to show cause dated 24.2.2004 to the petitioners mentioning the earlier round of litigation and the background of the case and thereafter, observed that a supernumerary post was created with the concurrence of the Finance Department in terms of the order dated 10.12.2002, so that the benefits that had accrued to Shri R.S. Sharma could be disbursed to him. Thereafter, the Department released a sum of ₹7,94,411/- to the petitioners for being paid in turn to Shri R.S. Sharma. Considering the aforesaid background, the respondents were of the opinion that the petitioner No.2/Management Committee of the school had failed to act in the interest of the education of the children and had adversely affected the interest of the school by willfully avoiding to comply with the directions issued in respect of Shri R.S. Sharma. As a result, the show cause notice issued to the petitioner No.2/Managing Committee of the school under Sections 24(3) and 6(2) of the Act as also the Rules, called upon the petitioners to comply with the directions and submit a compliance report within 10 days from the date of issuance of the said notice.

7. The grievance of the petitioners is that the aforesaid notice was not really notice to show cause, but was an order passed by the respondents

and the same was liable to be set aside for the reason that it had been served on the petitioners after a lapse of about one and a quarter year from the date of passing of the order dated 10.12.2002 in W.P.(C) 6424/2000. Learned counsel for the petitioners submits that by the time the notice to show cause dated 24.2.2004 was issued to the school, Shri R.S. Sharma had already been allowed to resume his duties upon creation of a supernumerary post in the petitioner No.1/school and therefore, no further compliances were required to be made by the petitioners as mentioned in the said notice. He also contends that the aforesaid order is contrary to the provisions of Rule 69 of the Delhi School Education Rules, 1973, which deals with the issue of stoppage, reduction or suspension of grant-in-aid and mandates that no aid would be stopped, reduced or suspended except after giving a reasonable opportunity of showing cause to the Managing Committee of the school against the proposed action.

8. Counsel for the respondents opposes the present petition and supports the impugned order by stating that the petitioner No.2/Managing Committee of the school ought to have complied with the directions that were issued by the respondents from time to time, calling upon the school to permit Shri R.S. Sharma to re-join his duties and it was on account of the gross non-compliance of the aforesaid orders that Shri R.S. Sharma lodged a complaint with the respondents and thereafter, having regard to the stand

taken by the petitioners that there was no vacancy to the post of PGT (Maths), the petitioner No.1/school was directed to accommodate Shri R.S. Sharma in Ramjas Boys Senior Secondary School No.5, Karol Bagh, which directions were also flouted by the petitioners, and instead they challenged the said order dated 03.07.2000 by preferring a writ petition against the same that was ultimately turned down by the Court with directions to reinstate Shri R.S. Sharma and that in case of there being no post available for his reinstatement in the petitioner No.1/school, to create a supernumerary post to accommodate him with all consequential benefits. It is stated that the release of these consequential benefits by respondent No.2/DOE has caused an unnecessary burden on the public exchequer to the tune of ₹7,94,711/-. She points out that public money had to be spent on account of arrears of pay & allowances released to Mr. R.S. Sharma, which was the liability of the petitioners but had to be borne by the Department and it was the said amount that was deducted from the grant-in-aid that was released to the petitioners for the period between 13.08.1997 to 31.12.2002, in terms of the order dated 13.5.2004 passed by respondent No.2/DOE.

9. This Court has heard the counsels for the parties and examined the facts and circumstances of the case in hand. As noticed above, the facts of the case are undisputed. It has not been denied by the petitioners that

the resignation of Shri R.S. Sharma was accepted by the school without the prior concurrence of the respondent No.2/DOE in terms of the provisions of Rule 114A of the Rules. It is also a matter of record that the plea taken by the petitioners, that *ex-post facto* approval had been sought by the School and could have been granted by the respondents, was taken note of and turned down in the order dated 10.12.2002 passed in W.P.(C) 6424/2000 which has attained finality. The fallout of the refusal on the part of the petitioners to reinstate Shri R.S. Sharma immediately after he lodged a complaint with the respondents and the repeated orders passed by the respondents calling upon the petitioners to do so on 11.06.1999, 27.12.1999 and finally on 03.07.2000, was that the petitioners had to finally release a sum of ₹7,94,111/- to Shri R.S. Sharma on account of his arrears of pay and allowances. The aforesaid amount had to be released by the respondents to Shri R.S. Sharma despite the fact that the petitioners had not assigned any duties to him and had not taken any service from him. Considering the fact that the petitioners No.1 and 2 receive grant-in-aid to the extent of 95% from the respondents, they were under an obligation to have sought prior approval of the respondent No.2/DOE before accepting the resignation of a teacher of their school, as is prescribed under the Delhi School Education Act and Rules. Having failed to do so, the respondents were justified in calling upon the petitioners to show cause as to why the aforesaid amount be not

recovered/deducted from the grant-in-aid released to the petitioners as it was the respondent No.2/DOE who had to release this amount to the petitioners for being disbursed in turn to Sh.R.S.Sharma, in compliance of the order dated 10.12.2002 passed in WP(C)No.6424/2000.

10. The contention of the petitioners that a perusal of the notice to show cause issued by the respondents reveals that compliances were required to be made by them only for the reinstatement of Shri R.S. Sharma which had already been done by them, and not for deduction of the amount, is untenable. Rather, if the notice to show cause is read as a whole instead of reading only the operative para thereof, it would clearly emerge that directions issued to the petitioners in the notice to show cause were mainly for the recovery of ₹7,94,711/- from the petitioners, the amount that the respondents had to incur for no fault on their part and purely on account of the fact that the petitioner No.1/school was reluctant to pay the said amount. It was not as if on the date of issuance of notice to show cause by the respondents, Shri R.S. Sharma had not joined his duties. Rather, the respondents were cognizant of the fact that the aforesaid teacher had joined his duties by that time, which is obvious from the fact that the notice to show cause mentions the fact that a supernumerary post had to be created so that the benefit accrued to Shri R.S. Sharma could be released to him.

11. It is also not denied by the petitioners that upon issuance of the notice to show cause, a reply had been submitted by the Manager of the petitioner No.1/school to the respondent No.2/DOE on 05.03.2004 and thereafter a personal hearing was granted by the respondent No.2/DOE on 26.04.2004. This was followed by passing of the impugned order dated 13.05.2004, whereunder the respondent No.2/DOE arrived at the conclusion that repeated non-compliance/violations by the petitioner No.2/Managing Committee of the school were of a serious nature and an amount of ₹7,94,711/- was to be deducted from the grant-in-aid to be released to the petitioner No.1/school for the next quarter on account of the fact that the Department had been made to release the aforesaid amount to the petitioner No.2/Managing Committee when no service was obtained by the school from Shri R.S. Sharma. Thus, principles of natural justice were duly followed by the respondent No.2/DOE before passing the impugned order dated 13.5.2004.

12. In the above circumstances, this Court is of the opinion that when the entire fault lies at the door of the petitioners, the respondents were quite justified in deducting the amount that had to be released by the Department to Shri R.S. Sharma, from the grants-in-aid payable to the petitioners for the second quarter of the year 2004. In view of the aforesaid facts and circumstances, the inevitable conclusion is that the impugned

order passed by the respondent No.2/DOE does not suffer from any illegality, arbitrariness or perversity that deserves interference. The order dated 13.5.2004 is accordingly upheld and the petition is dismissed, while leaving the parties to bear their own costs.

MAY 17, 2012
rkb/sk

(HIMA KOHLI)
JUDGE